

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE INSURANCE CORPORATION OF NEW YORK,

Civil Action No: 07-8700

Plaintiffs,

-against-

**ANSWER TO CROSS-  
CLAIMS AND REPLY  
TO COUNTERCLAIMS**

UNITED STATES UNDERWRITERS INSURANCE  
COMPANY, NATIONAL SURETY CORPORATION and  
FEDERAL INSURANCE COMPANY,

Defendants.  
-----X

Plaintiff, The Insurance Corporation of New York ("INSCORP), by its attorneys, Melito & Adolfsen P.C., as and for its Answer to Cross-Claims and Reply to Counterclaims set forth in the Answer of Defendant, United States Underwriters Insurance Company ("U.S. Underwriters"), responds as follows:

**FIRST CROSS-CLAIM AND COUNTERCLAIM**

1. Denies the allegations set forth in paragraph "66" of the First Cross-Claim and Counterclaim and respectfully refer the Court to the policy noted therein for a complete and accurate statement of its contents.
2. Denies the allegations set forth in paragraph "67" of the First Cross-Claim and Counterclaim.
3. Denies the allegations set forth in paragraph "68" of the First Cross-Claim and Counterclaim.
4. Denies the allegations set forth in paragraph "69" of the First Cross-Claim and Counterclaim.
5. Denies the allegations set forth in paragraph "70" of the First Cross-Claim and

Counterclaim.

6. Denies the allegations set forth in paragraph “71” of the First Cross-Claim and Counterclaim.

**SECOND CROSS-CLAIM AND COUNTERCLAIM**

7. Denies the allegations set forth in paragraph “72” of the Second Cross-Claim and Counterclaim and respectfully refer the Court to the policy noted therein for a complete and accurate statement of its contents.
8. Denies the allegations set forth in paragraph “73” of the Second Cross-Claim and Counterclaim.
9. Denies the allegations set forth in paragraph “74” of the Second Cross-Claim and Counterclaim.
10. Denies the allegations set forth in paragraph “75” of the Second Cross-Claim and Counterclaim.
11. Denies the allegations set forth in paragraph “76” of the Second Cross-Claim and Counterclaim.
12. Denies the allegations set forth in paragraph “77” of the Second Cross-Claim and Counterclaim.
13. Denies the allegations set forth in paragraph “78” of the Second Cross-Claim and Counterclaim.

**THIRD CROSS-CLAIM AND COUNTERCLAIM**

14. Denies the allegations set forth in paragraph “79” of the Third Cross-Claim and Counterclaim and respectfully refer the Court to the policy noted therein for a complete and accurate statement of its contents.
15. Denies the allegations set forth in paragraph “80” of the Third Cross-Claim and

Counterclaim.

16. Denies the allegations set forth in paragraph “81” of the Third Cross-Claim and Counterclaim.
17. Denies the allegations set forth in paragraph “82” of the Third Cross-Claim and Counterclaim.
18. Denies the allegations set forth in paragraph “83” of the Third Cross-Claim and Counterclaim.
19. Denies the allegations set forth in paragraph “84” of the Third Cross-Claim and Counterclaim.

**FOURTH CROSS-CLAIM AND COUNTERCLAIM**

20. Denies the allegations set forth in paragraph “85” of the Fourth Cross-Claim and Counterclaim and respectfully refer the Court to the policy noted therein for a complete and accurate statement of its contents.
21. Denies the allegations set forth in paragraph “86” of the Fourth Cross-Claim and Counterclaim.
22. Denies the allegations set forth in paragraph “87” of the Fourth Cross-Claim and Counterclaim.
23. Denies the allegations set forth in paragraph “88” of the Fourth Cross-Claim and Counterclaim.
24. Denies the allegations set forth in paragraph “89” of the Fourth Cross-Claim and Counterclaim.
25. Denies the allegations set forth in paragraph “90” of the Fourth Cross-Claim and Counterclaim.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

26. Defendant U.S. Underwriters' counterclaims and cross-claims fail to state a cause of action upon which relief could be granted.

**SECOND AFFIRMATIVE DEFENSE**

27. Defendant U.S. Underwriters' counterclaims and cross-claims claims are barred by the doctrines of waiver, estoppel, res judicata, accord and satisfaction, payment and release and laches.

**WHEREFORE**, Plaintiff INSCORP respectfully requests the following relief:

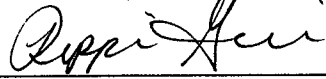
- A. A declaration that U.S. Underwriters is obligated to provide insurance coverage for Forthright with respect to the claims asserted in the underlying Spzakowski action;
- B. Dismissing Defendant U.S. Underwriters' cross-claims and counterclaims in their entirety; and
- C. Together with costs, disbursements, attorneys' fees and such other and further relief as this Court deems just, proper and equitable.

Dated: New York, New York  
January 7, 2008

Yours, etc.,

MELITO & ADOLFSEN P.C.

By: \_\_\_\_\_



Louis G. Adolfsen, Esq.

Rippi Gill, Esq.

*Attorneys for Plaintiff –*

*The Insurance Corporation of New York*

233 Broadway, 28<sup>th</sup> Floor

New York, New York 10279

(212) 238-8900

To: Miranda Sokoloff Sambursky  
Slone Verveniots LLO  
*Attorneys for United States Underwriters  
Insurance Company*  
240 Mineola Boulevard  
Mineola, NY 11501  
Att: Steven Verveniots

Rivkin Radler, LLP  
*Attorneys for National Surety Corporation*  
926 Rexcorp Plaza  
Uniondale, NY 11556  
Att: Frank Valverde, Esq.

Quirk & Bakalor, P.C.  
*Attorneys for Federal Insurance Company*  
845 Third Avenue  
New York, NY 10022  
Att: Timothy J. Keane, Esq.

62156

**DECLARATION OF SERVICE BY MAIL**

**DESIRAE COLLAZO**, being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age and resides at Staten Island, New York.


That on the 7<sup>th</sup> day of January 2008 deponent served the within **ANSWER TO CROSS-CLAIMS AND REPLY TO COUNTERCLAIMS** upon:

Miranda Sokoloff Sambursky Slone Verveniots LLO  
*Attorneys for United States Underwriters Insurance Company*  
240 Mineola Boulevard  
Mineola, NY 11501  
Att: Steven Verveniots

Rivkin Radler, LLP  
*Attorneys for National Surety Corporation*  
926 Rexcorp Plaza  
Uniondale, NY 11556  
Att: Frank Valverde, Esq.

Quirk & Bakalor, P.C.  
*Attorneys for Federal Insurance Company*  
845 Third Avenue  
New York, NY 10022  
Att: Timothy J. Keane, Esq.

attorneys and/or parties in this action, at the addresses designated by said attorneys and/or parties for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York. Attorneys and or parties, at the above address designated by said attorneys for that purpose at the fax number designated above.

  
DESIRAE COLLAZO

Sworn to before me this  
7<sup>th</sup> day of January, 2008

  
Notary Public

RYAN F. BLACKMER  
Notary Public, State of New York  
No. 02816122011  
Qualified in Nassau County  
Commission Expires February 22nd, 2009

NOTICE OF ENTRY

PLEASE take notice that the within is a (*certified*) true copy of a duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.

**MELITO & ADOLFSEN P.C.**

*Attorney for*

*Office and Post Office Address*  
233 Broadway  
NEW YORK, N.Y. 10279-0118

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on

M.

Dated,

Yours, etc.

**MELITO & ADOLFSEN P.C.**

*Attorney for*

*Office and Post Office Address*  
233 Broadway  
NEW YORK, N.Y. 10279-0118

To

Attorney(s) for

Index No.

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Year

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Defendants.

ANSWER TO CROSS- CLAIMS AND REPLY TO COUNTER-  
CLAIMS

Signature (Rule 130-1.1-a)

Print name beneath

**MELITO & ADOLFSEN P.C.**

*Attorney for*

*Office and Post Office Address, Telephone*  
233 Broadway  
NEW YORK, N.Y. 10279-0118  
(212) 238-8900

To

Attorney(s) for

Service of a copy of the within is hereby admitted.  
Dated

Attorney(s) for